IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4244 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

N B KAROOA

Versus

DIRECTOR, SOCIAL WELFARE DEPARTMENT,

Appearance:

1. Special Civil Application No. 4244 of 1992

MR BP TANNA with Mr. N.S. Kariel for Petitioner.

Mr. KT Dave, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 23/04/2004

ORAL JUDGEMENT

The present Special Civil Application is filed under Article 226 of the Constitution of India challenging the order passed by the Director of Social Welfare Department, Gujarat State, dated 18.11.1991 by which certificate issued in favour of the petitioner certifying that he belongs to 'Bhil' tribe, dated

4.5.1978 has been cancelled.

2. It is the case of the petitioner that his father was minor at the time when he was living in Mount Abu where his grandfather was in service with British Government in C.P.W.D. and after leaving Mt.Abu in pre-Independence days they had migrated to Poonava, which is a village in the State of Sirohi. After some time they migrated to Gujarat and started residing in Mehsana District. It is further the case of the petitioner that he was born on 1.6.1956 at Vavol which is now falling in Gandhinagar District. That he belongs to Bhil community and now as resident of State of Gujarat he applied for Caste Certificate showing that he belongs to Bhil community/S.T. community and Social Welfare Officer, District Panchayat, Ahmedabad granted the certificate on 4.5.1978 and on the basis of that certificate he got the service in the State Government and on the basis of selection by the Gujarat Public Service Commission.

3. It seems that Director of Social Welfare Department, State of Gujarat, was of the opinion that as the father of the petitioner was residing in Mt. Abu which is in the State of Rajasthan and the petitioner does not belong to State of Gujarat the Social Welfare Officer, District-Panchayat, Ahmedabad wrongly issued the caste certificate in favour of the petitioner on 4.5.1978 certifying that the petitioner belongs to S.T. community and therefore proceedings were initiated by him and a show cause notice came to be issued against the petitioner and the petitioner was directed to show cause why the certificate issued by the Social Welfare Officer, Panchayat, Ahmedabad dated 4.5.1978 should not be cancelled and after hearing the petitioner and considering the evidence on record, the Director, Social Welfare Department, State of Gujarat held that the petitioner belongs to State of Rajasthan and his father was residing in Mt. Abu and thereafter his father has shifted to Village Vavol and therefore he does not belong to State of Gujarat and accordingly on the basis of the aforesaid finding the Director held that if a person belonging to one State has shifted to another State then he will not be entitled to get the benefits which are available to persons of that community and accordingly cancelled the certificate issued by the Social Welfare Officer (Panchayat), Ahmedabad, dated 4.5.1978 by which it was certified that the petitioner belongs to S.T. community. It seems that on the basis of the said order dated 18.11.1991 some proceedings were initiated against the petitioner and the Director issued a letter to the Gujarat Public Service Commission to initiate the

proceedings to cancel his appointment as the certificate upon which the petitioner got the service came to be cancelled. At that stage the petitioner preferred the present Special Civil Application under Article 226 of the Constitution of India challenging the order passed by the Director, Social Welfare Department, Gandhinagar by which the caste certificate issued in favour of the petitioner dated 4.5.1978 by the Social Welfare Officer (Panchayat), Ahmedabad came to be cancelled.

4. Shri B.P. Tanna, learned Senior Advocate appearing on behalf of the petitioner has submitted that the authority had materially erred in holding that the petitioner belongs to State of Rajasthan and that he does not belong to State of Gujarat. He has submitted that till the State Reorganisation Act, 1956 on the appointed date Mount Abu was within the State of Bombay, Gujarat Region and Banaskantha District and Abu Road Taluka and therefore it is wrong to hold that the petitioner belongs to State of Rajasthan and does not belong to State of Gujarat. Considering the provisions of State Reorganisation Act, 1956, the fact that Mount Abu was within the State of Bombay, Gujarat Region, is not disputed by Shri K.T. Dave, learned AGP appearing on behalf of the respondent. The Director has erred in holding that the petitioner belongs to State of Rajasthan and does not belong to State of Gujarat. The Director has not considered the aforesaid fact and proceeded on the premises that Mt. Abu is situated within the State of Rajasthan and therefore he belongs to State of Rajasthan, but considering the aforesaid Act and the fact of Mount Abu originally within the State of Bombay and Gujarat Region being not disputed by the State Government, the impugned order passed by the Director, Social Welfare Department holding that the petitioner belongs to State of Rajasthan and not belonging to State of Gujarat and the consequential order passed by the Director cancelling the caste certificate issued by the Social Welfare Officer (Panchayat), Ahmedabad, dated 4.5.1978 is erroneous and factually incorrect and the same is required to be quashed and set aside. Even otherwise, in view of the fact that Bhil community is also required to be considered as 'Scheduled Tribe' even within State of Gujarat and in the State of Rajasthan also, it cannot be said that the petitioner is not entitled to the benefit which was available to the S.T. community.

5. For all these reasons, the impugned order passed by the Director, Social Welfare Department, Gujarat State dated 18.11.1991, by which the certificate issued by the Social Welfare Officer, District Panchayat,Ahmedabad

dated 44.5.1978 is cancelled, is hereby quashed and set aside. The petition is allowed. Rule is made absolute with no order as to costs.

rmr. [M.R. Shah, J.]